

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 102 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? No
 2. To be referred to the Reporter or not? No
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge?

No

NIRUBHA JASUBHA

Versus

STATE OF GUJARAT

Appearance:

Shri P.M. Thakkar, Advocate, for the Appellant

Shri S.R. Divetia, Addl. Public Prosecutor, for
the Respondent-State

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 05/02/97

ORAL JUDGEMENT

(per Pandya, J.)

The accused, along with two others, was facing charge under sec. 302 read with sec. 34 of the IPC in Sessions Case No. 40 of 1987 in the Court of learned

Sessions Judge at Bhavnagar. The case of the prosecution was that the deceased Khoda at about 7 p.m. on 30.9.1986 was given a stick blow by the accused No. 2. At that time accused No.1 was also present with a spear. What role was played by accused No.3 is not certain.

2. When the said Khoda came back to his house, he informed his father Devshibhai Pragjibhai about the incident. Therefore, Devshibhai decided to go to the house of the appellants and give them scolding. At that time he was accompanied by his brother Madhu as well as Khoda. As he proceeded further he met one Ravjibhai. At the request of said Devshibhai, Ravjibhai also accompanied him. They came to the place of Kanjibhai Vira. They found all the three accused standing there. Accused No.1 had a spear in his hand, accused No.2 had a stick and accused No.3 had a dharia. The said Devshibhai scolded these accused who are aged about 21 years about the earlier incident of accused No.2 giving a stick blow to Khoda. According to the prosecution version, on getting the scolding from Devshibhai, the accused reacted violently, they rushed towards them and accused No.1 gave one spear blow in the chest of Khoda with fatal consequences. The persons accompanying the said Devshibhai tried to intervene and they also received injuries.

3. It is not in dispute that Khoda died a homicidal death. The post-mortem note and the medical evidence clearly supports the case of the prosecution in this regard.

4. However, at the end of the trial, by his judgment dated 31.12.1988, the learned Sessions Judge was pleased to acquit accused Nos. 2 and 3 and was pleased to convict accused No. 1 who has preferred this appeal. Thus, we are concerned with the charge of murder levelled against the accused No. 1.

5. There is no manner of doubt that the prosecution has succeeded in establishing the factum of death of Khodabhai at the hands of the accused No.1 by the use of his spear. It landed on the right chest causing fatal injuries to the lungs leading to severe internal bleeding. However, the question remains that, could it be said to be a premeditated crime? For a moment, it could not be suggested that, when the prosecution party proceeded to give apparently a verbal scolding to the accused side, the accused were ready for them or that they were anticipating their arrival. Obviously, this was a sudden development. No doubt, it is a follow-up of

the earlier incident of a stick blow. However, it being night time, to expect these people to go and thereby to further hold that the accused side were waiting there with a clear intention of causing the death of the deceased, in our opinion, is totally unwarranted.

6. As if this is not enough, at the time of the incident Mr. Khoda must have been aged about 35. He had a tiff with the youngsters like the present accused. Taking as such that the elders intervened, the verbal altercation eventually resulted in a single blow with the fatal consequences. In our opinion, therefore, it would not be falling in the category of offence punishable under sec. 300 of the IPC and it would be homicide not amounting to murder.

7. Looking to the injury of the injured persons, it would be a matter falling within the purview of sec. 304 Part 1 of the IPC for which ordinarily sentence of 10 years would have been awarded. The accused has undergone sentence more than that as he was convicted under sec. 302 by the learned Sessions Judge by his impugned judgment. There is, therefore, no question of passing any order of sentence in this appeal.

8. The appeal is, therefore, allowed. The order of conviction under sec. 302 of the IPC is set aside. The accused appellant stands convicted for the offence punishable under sec. 304 Part 1 of the IPC. Whatever sentence that he has already undergone is considered enough. He is ordered to be set at liberty forthwith, if not required in any other case.

(Hari)